

13-CV-02013-MEM

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON

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 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 DEPUTY

SAMIR AND MAJDA ABOULHOSN,)
)
 Plaintiffs,) NO. 2:13-cv-02013-RAJ
)
 vs.) MEMORANDUM IN OPPOSITION TO
) DISMISS MERITORIOUS CLAIM
)
 WELLS FARGO HOME MORTGAGE; et)
 al,)
)
 Defendants

Plaintiffs Samir and Majda Aboulhosn file this Memorandum in Opposition to Dismiss Meritorious Claim. Plaintiffs remind the Court that in its order of 12/24/13, it stated: "The court finds that the pleadings and documents before it raise at least substantial questions on the merits of one or more claims and that Plaintiff will suffer irreparable harm if Defendants continue with an attempted trustee sale".

Plaintiffs Meritorious Claims and Contentions:

Numerous and Conflicting Claims of Ownership of the Note:

1 1. Golf Savings Bank / Lender and Rainier Title Insurance
2 Company / Trustee are described as the Grantees. MERS is
3 the Nominee for Lender. Northwest Trustees and Wells
4 Fargo wanted to foreclose. It is unlikely that all the
5 assignments of title in the chain of title have taken
6 place without any defects such as robo-signing.
7

8
9 2. The third Defendant (Northwest Trustees Services) has
10 "scarcely participated in this action" as the Court has
11 noted in its order on May 22nd, 2014. Plaintiffs are
12 filing a motion for entry against Northwest Trustees due
13 to:
14

15 a- Failure to identify the owner of the promissory
16 note or other obligation secured by the deed of
17 trust or the entity authorized to exercise the
18 right of the owner as it is required by the Deed of
19 Trust Act.
20

21 b- Failure to provide Plaintiffs copies of
22 documentation showing the entity claiming to be the
23 beneficiary is the owner of the promissory note
24 which is a violation of the Foreclosure Fairness
25 Act.
26
27
28

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1 c- Failure to act in good faith toward the
2 borrowers/Plaintiffs and its duty to act
3 independently when enforcing the Deed of Trust
4 provisions.
5

6 d- Failure of NWTS to perfect their obligation to all
7 of the parties to the deed, including the homeowner
8 under RCW 61.24.010(4).
9

10
11 3. Violation of the FDCPA that prohibits a debt collector

12 In its section 1692f (6) § 808 from "taking or
13 Threatening to take any non-judicial action to effect
14 Dispossession or disablement of property if:

15 A- "There is no present right to possession of the
16 property claimed as collateral through an enforceable
17 security interest". Defendants have relied on
18 fraudulent documentation in the foreclosure process
19 including "robo-signing".
20
21

22
23 4. Wells Fargo deceived Plaintiffs many times by not
24 offering them the correct modification under the law.
25 Defendant advised Plaintiffs/Borrowers in 2009 to default
26 on their mortgage payments in order to qualify for
27 modification which was not required by law; Plaintiffs
28

1 were not aware of this fact at the time. Consequently,
2 Plaintiffs' interest rate on their credit cards jumped
3 from 3% to about 29% which added severe burdens to their
4 hardship.
5

6 5. The Loan Modification Application Program of Defendants
7 is a Fraud, and is not based on any objective standards
8 consistently applied; instead it is biased in favor of
9 denying any relief to borrowers. Plaintiffs were offered
10 two modifications in 2009/2010 at 60% of their income
11 that was reduced due to the fall of the economy and loss
12 of work opportunities. Defendants failed to offer
13 Plaintiffs a modification based on their income and the
14 real market property value. Instead of offering relief to
15 borrowers, Defendants were busy foreclosing on decent and
16 hardworking consumers around the nation. Daily phone
17 calls to Defendants to offer the correct modification
18 fell on deaf ears. In 2011, Plaintiffs were having
19 problem with severe land erosion of their property and
20 contacted Defendants requesting assistance with the
21 insurance company. Till this day, no relief from
22 Defendants to help the situation. At that same time of
23 2011, Plaintiffs were offered a long awaited
24 modification; however they could not take it because of
25
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28

1 the severe land erosion and the decrease in real property
2 value of over \$250k (underwater).

3
4 6. Defendants caused irreparable harm to Plaintiffs by
5 misrepresenting the loan modification process.

6 Defendants' practices continue in harming borrowers by
7 making them believe or pretending to offer a loan
8 modification while threatening to foreclose against the
9 same homeowners. This situation became reality to
10 Plaintiffs when in June 2013, they made a modification
11 PAYMENT[payment]as informed by our POC,AND ALL DOCUMENTS
12 WE RECEIVED AND IN THE LETTER OF MODIFICATION OUR
13 ATTORNEY RECEIVED[payment].EXPRESS MAIL SEND to the
14 lender AND RECEIVED, AS ALWAYS BEEN personal check,
15 NEVER EVER HAVE NSF. And beside attempted to make another
16 one by cash STILL TO secure the modification payment.
17 Went to ONE OF THEIR BRANCHES.BUT THE CASH PAYMENT COULD
18 NOT POST,AND THE BRANCH MGR HAVE NO EXPANATION NOR THE
19 PERSONS HE CALLED WHY???????TO FIND LATER AFTER LONG
20 WEEKEND TUESDAY MORNING FROM MY reliable POC [person in
21 contact]back from his leave, he informed me that my
22 personal check payment is not excepted,[certified
23 fund]and cash payment also not excepted because we are in
24 foreclosure.. Dealing with MY POC FOR ALMOST 3 months.
25
26
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28

1 NEVER EVER MENTIONED THAT, VERBALLY OR IN ANY
2 CORRESPONDENT. BESIDE WE OR OUR ATTORNEY NEVER RECIEVED
3 THE LETTER THEY PRETEND THEY SEND ON 04/30/2013 HAVING
4 PAYMENT COUPON AND ADRESS TO SEND TO,WHICH WAS MISSING IN
5 THE LETTER 04/29/2013 we and our only letter in that
6 regard received. This kind of dealing we experienced a
7 lot between 2009 AND THE BEGINNING OF 2013, BEFORE THE
8 LENDERS AGREED TO HAVE an ASSIGNED POC FOR EACH
9 BORROWER.STILL IN OUR CASE OUR POC DID NOT DO HIS JOB.
10 INFORMING US ABOUT VERY IMPORTANT CRITICAL THINGS WE MUST
11 KNOW OR DO,WHICH HE WAS SUPPOSED TO DO WITHOIT ANY DOUBT,
12 that's HIS FULL RESPONSIBILITY TO THE BORROWER.WHICH IF
13 HE DONE,WOULD IN OUR CASE AVOID PUTTING US IN THIS
14 SITUATION .AND SAVING US ALL THIS ,AND THE VALUABLE TIME
15 OF THE COURT.BUT IT IS A PRACTICE THEY ARE USED AND
16 continue doing it, putting MORE STRESS AND ANXIATY ON THE
17 BORROWERS LIFE HOPING THEY WILL BE FEED UP .AND THE
18 RESAULT for them the server and the trustee ANOTHER HUGE
19 ILLEGAL PROFIT..BUT FOR SURE THIS did NOT WORK WITH US.
20 And will not.IN 2014 ON MARCH 17TH DEFENDANT INSSISTED ON
21 US TO APPLY FOR MODIFICATION UNDER MEMEMORENDUIM
22 SETTLMENT AGREEMENT, WE DELIVERED 83 PAGES TO THE
23
24
25
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1 DEFFENDENT OFFICE.STILL NO RESPOND ... AGAIN DEFENDANT
2 DECEPTIVE PRACTICES CONTINUES.

3 7. The dual-track process practiced by Defendants is a proof
4 of deception and is not intended as an attempt to
5 negotiate modification agreements in good faith.

6 8. The dual-track process is intended to give borrowers the
7 illusion and the fake belief that the Defendants are
8 working with good intentions and in good faith.

9 9. Intentional Infliction of Emotional Distress is evident
10 by Defendants knowledge that they don't own the Note and
11 yet, they wanted to foreclose on Plaintiffs' property.
12 Intentional wrongful foreclosure is the basis for the
13 intentional infliction of Emotional Distress.

14 10. Defendants did not offer Plaintiffs any opportunity to
15 Remain in their home through restructuring of the loan.
16 Even during mediation with Defendants in January 2014,
17 Plaintiffs requested a loan restructure so Plaintiffs can
18 Stay in their home and assume their responsibility,
19 However, Defendants were adamant with their decline.

20 11. Defendant/Servicer is using false pretenses to coerce
21 Its victims, who are the Plaintiffs in this case to make
22 High modification payments, and when they fail to do so,
23 they take their home from them. Fact is, that even though
24 25 26 27 28

1 the modification offered to Plaintiffs in April 2013 was
2 Excessively high for Plaintiffs to afford, they took it
3 Anyway just so they keep their home. They sent their
4 Payment to Defendant/Serviceicer who proceeded with
5 Foreclosures proceedings.
6

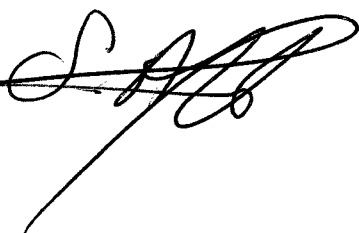
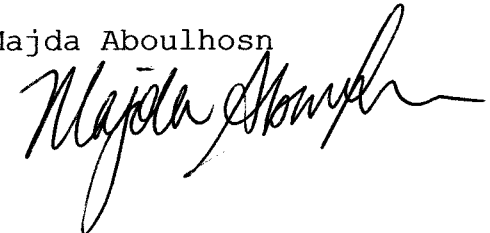
7 12. Defendants had a policy of evasive tactics including
8 Losing documents, requiring unnecessary documents,
9 Delaying decisions, failing to apply industry standards
10 to review loan modification applications, wearing out
11 Plaintiffs to make them lose interest and energy in the
12 Process and ultimately lose their home. Another tactic
13 is to make borrowers claim they have hardship and use that
14 against them.
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21 Based on all the reasons listed above, Plaintiffs
22 respectfully request from this Court not to dismiss this
23 case with Prejudice.
24

25
26 Plaintiffs:
27
28

Samir Aboulhosn

Majda Aboulhosn

A handwritten signature in black ink, appearing to be 'SAB', written over a horizontal line.A handwritten signature in black ink, appearing to be 'Majda Aboulhosn', written in a cursive style.